

been paid by Stockett on account of this debt, reducing it as of the date of the said report to \$981 67. It also appears by an order of the late Chancellor, passed on the 29th of July, 1846, upon the petition of the complainant, Shipley, praying that proceedings might be instituted for the foreclosure of this mortgage, amongst others that authority was given for that purpose. The language of the order is, "that the said mortgages in the said petition mentioned, be forthwith closed, and that the said Larkin Shipley have leave to cause a suit or suits to be instituted for that purpose in the names of the trustees, in such manner as may be most proper, necessary and beneficial to him."

The bill was filed under this order, but the answer of Stockett insists that the proceeding against him should have been by petition in the original cause, and not by bill for foreclosure and sale of the mortgaged premises. This objection, I think, is answered by the order of July, 1846, which expressly authorizes the party to proceed by suit, or suits, as may be most beneficial to him. I cannot think the Chancellor intended to confine the plaintiff to a proceeding by way of petition in the original cause.

In an account marked H., filed on the 22d of January, 1838, and ratified on the 24th of the same month, the defendant, Stockett, was allowed a commission of six per cent. on the amount accounted for by him. There is not, in my opinion, any thing in his conduct since then, which should deprive him of a commission at the same rate on the payments made by him since.

The proceedings in the original cause of Jones and wife against Wayman and Stockett, being, by agreement of counsel, referred to as evidence in this cause, it is thought the sum now due on the mortgage of Stockett may be readily ascertained by correcting his accounts filed on the 12th of this month, by crediting him with commissions on the payments made by him since the former account. Upon ascertaining the precise amount due from him, the Chancellor will pass a decree for the sale of the mortgaged premises, unless the said Stockett shall pay the sum so due, with interest and costs, within nine months from the